



## **Indiana County Auditors Conference**

**October 24, 2013**

### **(A Brief) Overview of Property Tax Exemptions**

**Indiana Department of Local Government Finance**

**David Marusarz, Staff Attorney**



# Agenda

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- Legal basis for exemptions
- Applying for exemptions
- Changes in ownership or use
- Granting an exemption
- *Oaken Bucket* decision
- Nursing homes



# Disclaimer

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**This presentation offers an overview of some property tax exemption topics and is not meant to be a substitute for reading the law.**



# The Legal Basis for Exemptions

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Article 10, Section 1 of the Indiana Constitution permits the Legislature to exempt certain classes of property from property taxation.

IC 6-1.1-10 contains most of the exemptions available, but exemptions may be found throughout the Code.

Exemption procedures are found in IC 6-1.1-11. The procedures include application requirements, deadlines, et cetera.



# A privilege, not a right...

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An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. IC 6-1.1-11-1.

Burden is on the applicant to show that the predominant part of the property claimed to be exempt is substantially related to the exercise or performance of the applicant's exempt purpose. IC 6-1.1-11-3(d).



# Let's be precise, here...

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**Exemption** → property is not taxable (to whatever extent)

- E.g., churches, charitable organizations
- IC 6-1.1-10; IC 6-1.1-11

**Deduction** → reduces the taxable AV of a property by a fixed dollar amount

- E.g., Homestead, Mortgage, Over 65, Disabled Veteran
- IC 6-1.1-12

**Credit** → reduces the net tax bill by a designated percentage or prevents a tax bill from exceeding a certain percentage

- Circuit Breaker, Over 65, LOIT Homestead



# Applying for an Exemption

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Application (Form 136) must be filed with the county assessor on or before May 15th of the assessment year.

→ May 15, 2013, for the 2013-pay-2014 property taxes.

However, the exemption application is not required if the exempt property is owned by the United States, the state, an agency of this state, or a political subdivision (as defined in IC 36-1-2-13). This exception applies only when the property is used, and in the case of real property occupied, by the owner.



# Applying for an Exemption

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## IC 6-1.1-11-4(d):

Ordinarily, the exemption must be re-filed every **even** year unless:

(1) the exempt property is:

- (A) tangible property used for religious purposes described in IC 6-1.1-10-21;
- (B) tangible property owned by a church or religious society used for educational purposes described in IC 6-1.1-10-16;
- (C) other tangible property owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes described in IC 6-1.1-10-16; or
- (D) other tangible property owned by a fraternity or sorority (as defined in IC 6-1.1-10-24).

(2) the exemption application was filed properly at least once for a religious use under IC 6-1.1-10-21, an educational, literary, scientific, religious, or charitable use under IC 6-1.1-10-16, or use by a fraternity or sorority under IC 6-1.1-10-24; and

(3) the property continues to meet the requirements for an exemption under IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24.





# Applying for an Exemption

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**Question:** Why are some properties automatically exempt from taxation, and why do some have to fill out Form 136?

**Answer:** Properties that are exempt by law, such as those owned by federal, state, or local units of government are exempt and do not require an Exemption Application. Other entities, that are exempt by filing (e.g., those that are owned, used, or occupied for educational, literary, scientific, religious or charitable purposes) must file and receive approval for their Exemption Application. See IC 6-1.1-11-4.



# Changes in Ownership or Use

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Exemption is valid after change in ownership if the property continues to meet the requirements under IC 6-1.1-10-16, IC 6-1.1-10-21 or IC 6-1.1-10-24.

If the property does not continue to meet the exemption requirements, the exemption is to be removed for that same tax cycle. Notice that this practice differs from the way in which deductions are handled. Deductions stay in place for the entire tax cycle even if property changes hands during the year, so long as the deductions were validly in place on March 1.



# Changes in Ownership or Use

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**Question:** What if ownership changes or the property is used for a non-exempt purpose?

**Answer:** The person who obtained the exemption, or the current owner, must notify the county assessor in the year that the change occurs.

➤ Include Form 136 CO/U “Notice of Change of Ownership of Exempt Property”  
(<https://forms.in.gov/Download.aspx?id=7564>)



# Changes in Ownership

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If the county assessor discovers that title to property granted an exemption described in IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24 has changed, the county assessor must notify the persons entitled to a tax statement for the property of the change in title and indicate that the county auditor will suspend the exemption until the persons provide the county assessor with an affidavit, signed under penalties of perjury, that identifies the new owners of the property and indicates that the property continues to meet the requirements for the exemption.

Upon receipt of the affidavit, the county assessor must reinstate the exemption for the years for which the exemption was suspended and each year thereafter that the property continues to meet the requirements for the exemption.



# Granting an Exemption

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In order to grant an application for an exemption, in whole or in part, the county PTABOA must find that the statutory prerequisites for an exemption have been met. If any of the statutory prerequisites have not been met, the exemption cannot be granted.

If the application is denied in whole or in part, notice of that action will be given on Form 120 (link: <https://forms.in.gov/Download.aspx?id=5600>).

An applicant may appeal to the Indiana Board of Tax Review ("IBTR") within thirty (30) days from the date the notice of rejection is given by the county PTABOA.

Note: IC 6-1.1-11-7(c) states the appeal must be filed within 30 days. The IBTR website and rules, following IC 6-1.1-15-3, state an appeal can be filed within 45 days of the notice of rejection.



# Granting an Exemption

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Exemption may include real property, personal property, or both.

Exemption amount may be 100%, or a certain percentage, depending on the circumstances.

Taxpayer must submit evidence that the property qualifies for exemption under a specific statute.

Failure to provide documentation such as Articles of Incorporation, By-laws, and Income and Expense Statements, may result in the denial of the exemption sought.



# Exemptions meet Deductions

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## IC 6-1.1-12-46:

For an assessment date in 2011 or later, if:

1. Real property is not exempt on March 1;
2. Title is transferred before December 31; and
3. The new owner applies for an exemption for the next assessment date and the Property Tax Assessment Board of Appeals ("PTABOA") determines the new owner qualifies for the exemption;

for the non-exempt assessment date, any deductions and related tax cap credits should be applied to the property such that the exempt property will benefit.



# Exemptions meet Deductions

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## Example:

John Smith owns a property as of March 1, 2013, and is eligible to receive the homestead and mortgage deductions on this property. The property is not exempt for the March 1, 2013, assessment date. John Smith sells his property to a church on or before December 31, 2013. The church applies for an exemption for the March 1, 2014, assessment date and the PTABOA determines it is exempt for the March 1, 2014, assessment date. The church will receive John Smith's deductions for the 2013-pay-2014 property taxes, as well as the property tax cap that would have been applied to the property under John Smith's ownership. The church's exemption will apply for the 2014-pay-2015 property taxes.

(See DLGF's May 19, 2011, memo: [http://www.in.gov/dlgf/files/110519 - Stanley Memo - Exemptions HEA 1004-2011.pdf](http://www.in.gov/dlgf/files/110519_-_Stanley_Memo_-_Exemptions_HEA_1004-2011.pdf) )





# ***The Oaken Bucket Case***



# *The Oaken Bucket Case*

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*HAMILTON COUNTY PROPERTY TAX  
ASSESSMENT BOARD OF APPEALS & HAMILTON  
COUNTY ASSESSOR v. OAKEN BUCKET  
PARTNERS, LLC, 938 N.E.2d 654 (Ind. 2010), is a  
Indiana Supreme Court decision that counties  
should take heed of when reviewing property  
tax exemption applications filed by landlords  
who rent to religious or charitable  
organizations.*



# What's in this *Oaken Bucket*?

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Some of the key points from the case:

1. In order to qualify for an exemption, the landlord must demonstrate a unity of ownership, occupancy, and use. That is, that the property
  - a) is owned for exempt purposes,
  - b) occupied for exempt purposes, and
  - c) predominantly used for exempt purposes.

When unity of ownership, occupancy, and use is lacking, both the landlord and tenant must demonstrate that they possess their own exempt purpose.

2. Charging below market rent for part of a building rented to a church or other religious or charitable organization is insufficient, standing alone, to justify a religious or charitable purpose property tax exemption.
3. Although the fact that a landlord charges below market rent to a charitable or religious organization may demonstrate some indicia of the landlord's beneficent motives, more is required to show the landlord has its own exempt purpose.



# What's in this *Oaken Bucket*?

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In essence, charging below market rent to an exempt entity does not, without more, establish an exempt purpose on the part of the property owner.



# Exemptions and Nursing Homes



# On Exempting Nursing Homes

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Over the past several years, debate has brewed over whether nursing home facilities should be exempt.

On February 16, 2012, the Indiana Tax Court issued a decision involving the Tipton County Healthcare Foundation, Inc., f/k/a Tipton County Memorial Hospital Foundation, versus the Tipton County Assessor (see <http://www.in.gov/judiciary/opinions/pdf/02161201mbw.pdf>).



# On Exempting Nursing Homes

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Some key general holdings of the case that counties should take into consideration when reviewing property tax exemptions filed by nursing homes:

1. The sole issue in this case was whether the Foundation failed to raise a prima facie case that its assisted living facility is entitled to a charitable purposes property tax exemption under IC 6-1.1-10-16.



# Revisiting *Oaken Bucket*

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2. IC 6-1.1-10-16 provides that “[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.”
  - Unity of ownership, occupancy, and use is not required under IC 6-1.1-10-16.
  - But when this unity is lacking, each entity must demonstrate that it has its own exempt purpose and explain the connection between that purpose and its ownership, occupancy, and use of the property.
3. It has long been held that exemption statutes are to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish its right to an exemption.





# Charity Begins at (the Nursing) Home

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4. To qualify for a charitable purposes exemption, a taxpayer must show “obviously charitable acts different from the everyday purposes and activities of man in general” which are manifest in the relief of a person's needs.

Indeed, a charitable purpose is accomplished “by meeting the needs of the aging, namely, relief of loneliness and boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, and attention to problems of health....”



# Charity Begins at (the Nursing) Home

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5. IC 6-1.1-10-16 requires not simply the accomplishment of good and noble deeds, but the showing of a charitable purpose. This ensures that:
  - 1) The benefit that the exemption confers relieves government of a cost it would otherwise bear.
  - 2) The exemption's largess does not primarily fulfill a commercial profit motive.
6. Although an entity's for-profit status alone is not sufficient to show that a lease arrangement will result in private benefit, its status is germane.



## Keep in mind:

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7. While the Tax Court ruling is informative for when reviewing a property tax exemption for a nursing home, each situation stands on its own merits (i.e., the applicant's situation may not be analogous to the recent ruling).

Neither the language of one case nor an apparent trend from several cases has established a per se rule that an assisted living facility that cares for the elderly is automatically considered exempt by the mere character of its deeds.



# Remember:

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**Every exemption case stands on its own facts and, therefore, is not susceptible to bright-line tests or other abbreviated inquiries.**



# Thank you!

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**For questions:**

- **David Marusarz, Staff Attorney**
- **Phone: (317) 233-6770**
- **Fax: (317) 232-8779**
- **E-mail: [dmarusarz@dlgf.in.gov](mailto:dmarusarz@dlgf.in.gov)**
- **Website: [www.in.gov/dlgf](http://www.in.gov/dlgf)**
- **“Contact Us”**  
**[www.in.gov/dlgf/2338.htm](http://www.in.gov/dlgf/2338.htm)**